



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

#### **49 CFR Parts 383 and 384**

**[Docket No. FMCSA-2023-0115]**

**RIN 2126-AC46**

### **Amendments to the Commercial Driver's License Requirements; Increased Flexibility for Testing and for Drivers After Passing the Skills Test**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of  
Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FMCSA proposes to increase flexibility for State Driver Licensing  
Agencies (SDLAs) and commercial driver's license (CDL) applicants by expanding  
applicants' ability to take a CDL skills test in a State other than their State of domicile;  
permitting a commercial learner's permit (CLP) holder who has passed the CDL skills  
test to operate a commercial motor vehicle (CMV) on public roads without having a  
qualified CDL holder in the passenger seat; eliminating the requirement that an applicant  
wait at least 14 days to take the CDL skills test following initial issuance of the CLP. The  
NPRM also proposes to remove the requirement that CMV drivers must have a passenger  
(P) endorsement to transport CMVs designed to carry passengers, including school buses,  
when the vehicle is being transported in a driveaway-towaway operation and the vehicle  
is not carrying any passengers. Additionally, FMCSA proposes to require that third-party  
knowledge examiners be subject to the training, certification, and record check standards  
currently applicable to State knowledge examiners and third-party knowledge testers be  
subject to the auditing and monitoring requirements now applicable to third-party skills  
testers. The NPRM responds to petitions for rulemaking from the American Trucking

Associations (ATA) and the New Hampshire Department of Transportation (NHDOT), as discussed below. FMCSA believes these proposals would improve the efficiency and convenience of CDL issuance and improve highway safety by further ensuring the integrity of third-party CDL knowledge testing.

**DATES:** Comments must be received on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2023-0115 using any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov/docket/FMCSA-2023-0115/document>. Follow the online instructions for submitting comments.
- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

**FOR FURTHER INFORMATION CONTACT:** Patrick D. Nemons, Director, Office of Safety Programs, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001; (202) 385-2400; [patrick.nemons@dot.gov](mailto:patrick.nemons@dot.gov). If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

FMCSA organizes this NPRM as follows:

- I. Public Participation and Request for Comments
  - A. Submitting Comments
  - B. Viewing Comments and Documents
  - C. Privacy Act

- D. Comments on the Information Collection
- II. Executive Summary
  - A. Purpose and Summary of the Regulatory Action
  - B. Summary of Major Provisions
  - C. Costs and Benefits
- III. Abbreviations
- IV. Legal Basis
- V. Background
- VI. Discussion of Proposed Rulemaking
- VII. Section-by-Section Analysis
- VIII. Severability
- IX. Regulatory Analyses
  - A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
  - B. Congressional Review Act
  - C. Waiver of Advance Notice of Proposed Rulemaking
  - D. Regulatory Flexibility Act (Small Entities)
  - E. Assistance for Small Entities
  - F. Unfunded Mandates Reform Act of 1995
  - G. Paperwork Reduction Act (Collection of Information)
  - H. E.O. 13132 (Federalism)
  - I. Privacy
  - J. E.O. 13175 (Indian Tribal Governments)
  - K. National Environmental Policy Act of 1969

## **I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS**

### **A. Submitting Comments**

If you submit a comment, please include the docket number for this NPRM (FMCSA-2023-0115), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2023-0115/document>, click on this NPRM, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

### **Confidential Business Information (CBI)**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 United States Code (U.S.C.) 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Analysis Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington DC 20590-0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

### **B. Viewing Comments and Documents**

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2023-0115/document> and choose the document to review. To view comments, click this NPRM, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New

Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

### **C. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov) as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notice>. The comments are posted without edit, and are searchable by the name of the submitter.

### **D. Comments on the Information Collection**

Written comments and recommendations for the information collection discussed in this NPRM should be sent within 60 days of publication to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this information collection by clicking the link that reads “Currently under Review - Open for Public Comments” or by entering Office of Management and Budget (OMB) control number 2126-0011 in the search bar and clicking on the last entry to reach the “comment” button.

## **II. EXECUTIVE SUMMARY**

### **A. Purpose and Summary of the Regulatory Action**

The purpose of the NPRM is to enhance the flexibility and efficiency of the CDL program by removing certain regulatory restrictions to allow applicants to obtain a CDL and be productively employed as a CMV driver in less time than it currently takes, without compromising safety. The NPRM also proposes measures to ensure the consistency and integrity of the administration of CDL knowledge tests provided by third-party examiners and facilitate the safe transport of empty CMVs designed to

transport passengers (passenger CMVs) more efficiently. FMCSA believes the proposed changes will further address CMV driver shortages, enhance supply chain stability, and provide appropriate regulatory relief without impacting safety. In the case of CDL knowledge testing administered by third parties, the proposal would improve safety by imposing applicable training and certification standards for third-party knowledge examiners currently required for State-employed knowledge test examiners, and by imposing monitoring standards for third-party knowledge testers currently applicable to third-party skills testers. The proposed changes are summarized immediately below and further explained in Section VI., Discussion of the Proposal.

## **B. Summary of Major Provisions**

### *CDL Skills Testing for Out-of-State Applicants*

Section 383.79(a)(1) currently permits a State to administer the CDL skills test to an applicant domiciled in another State, provided the individual has obtained training in the State where the skills test will be administered. Such test results must be transmitted electronically directly from the testing State to the licensing State in a direct, efficient, and secure manner. The NPRM proposes to remove the requirement that an applicant must have obtained training in the testing State in order to take the CDL skills test in that State.

With the implementation of FMCSA's entry-level driver training (ELDT) regulations in February 2022, all States can be assured that the out-of-state applicant has completed the required minimum training as set forth in 49 CFR part 380, subpart F. The NPRM, by proposing to allow States discretion to provide skills testing to out-of-State applicants, regardless of the State in which training was obtained, may allow applicants to obtain a CDL sooner by scheduling the skills test in a State with shorter waiting times. Because all States administering the CDL skills test must follow the test standards and

requirements set forth in 49 CFR part 383, subparts G and H, the proposal would not adversely impact safety.

#### *CLP Holders Who Have Passed the CDL Skills Test*

Pursuant to § 383.25(a)(1), CLP holders may operate a CMV on public roads and highways only for purposes of BTW training, as long as a CDL holder is physically present in the front seat of the vehicle or, in the case of a passenger CMV, directly behind or in the first row behind the driver and has the CLP holder under observation and direct supervision. The NPRM proposes an exception to this provision that would allow CLP holders who have passed the CDL skills test to operate a CMV for any reason, provided a CDL holder is physically present in the CMV, the CLP driver has passed the CDL skills test, and the driver possesses documentary evidence from the testing State that they have passed the CDL skills test.

Since the current provision was adopted in 2012, FMCSA implemented minimum ELDT requirements, set forth in 49 CFR part 380 subpart F. Once the CLP holder has passed the skills test and, thus, demonstrated their ability to safely operate a CMV, the current restriction limiting CLP holders to CMV operation only for purpose of BTW training would no longer be necessary. Because these drivers have already met all the requirements for a CDL, but have yet to pick up the CDL document from their State of domicile, their safety performance would be the same as a newly-credentialed CDL holder. Additionally, having a CDL driver accompany the CLP driver who has successfully passed all required CDL skills testing and prerequisites, provides some additional supervision that is otherwise not required for newly-credentialed CDL drivers in physical possession of the CDL document.

#### *CLP Holders Eligible to Take the CDL Skills Test*

As set forth in § 383.25(e), CLP holders are not eligible to take the CDL skills test in the first 14 days following initial issuance of the CLP. FMCSA proposes to eliminate

this restriction, which was intended to ensure CLP holders obtained BTW training prior to taking the skills test to improve their chances of passing the test on the first attempt. The restriction is no longer necessary, however, because CLP holders must now complete ELDT (theory training and BTW range and road training) before taking the skills test for a Class A or Class B CDL or the P or school bus (S) endorsement, in accordance with § 383.73(b)(11) and (e)(9).

### *Third-party Knowledge Testers and Examiners*

In accordance with regulatory guidance adopted on February 3, 2022, States may authorize the use of third-party knowledge examiners as long as they adhere to the CDL knowledge test standards and requirements set forth in 49 CFR part 383, subparts G and H.<sup>1</sup> When issuing that guidance, FMCSA noted its intention to propose regulatory requirements further clarifying the States' use of third-party knowledge examiners. This NPRM proposes those requirements, which are intended to ensure the integrity of third-party CDL knowledge testing.

First, States authorizing third-party knowledge examiners would be required to apply to those examiners the training, certification, and record check requirements currently applicable to State knowledge examiners, as set forth in § 384.228. Third-party skills examiners already certified under § 384.228 who also administer the knowledge tests would be excepted from duplicative training and record check requirements. In addition, States would be required to include third-party knowledge examiners within the scope of the auditing and monitoring provisions set forth in § 384.229, currently applicable only to third-party skills examiners. States authorizing third-party knowledge testers (i.e., entities that employ third-party knowledge examiners) and examiners would be subject to the auditing and monitoring requirements for third-party skills testers and examiners, set forth in § 383.75, as applicable. Finally, the NPRM proposes to add a

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<sup>1</sup> See, 87 FR 6045 (Feb. 3, 2022).



requirement that third-party knowledge testers or examiners administer the knowledge test only by electronic means.

#### *Operation of Empty Passenger CMVs*

The NPRM proposes to except CDL holders operating CMVs designed to carry passengers, including school buses, from having a P endorsement when the CMV is empty of passengers and the driver is transporting the CMV from the manufacturer to the distributor or in a *driveaway-towaway operation*, as defined in § 390.5T. As explained further below, FMCSA's current regulations do not require an S endorsement to operate an empty school bus. Both the S and P endorsements are intended to ensure the driver has the knowledge and skills necessary to safely transport passengers and to evacuate the CMV in case of emergency. The proposed change would therefore enhance flexibility in transporting empty passenger CMVs to distributors, dealers, purchasers, and repair facilities without compromising passenger safety.

#### **C. Costs and Benefits**

FMCSA believes these proposals would improve the efficiency and convenience of CDL issuance, provide needed flexibility for CLP holders who have demonstrated their ability to safely operate a CMV by passing the CDL skills test, improve highway safety by ensuring the integrity of third-party CDL knowledge testing, and enhance flexibility in the transport of empty passenger CMVs from the manufacturer to the distributor or in a driveaway-towaway operation. The proposed rule could affect States, third-party knowledge examiners, CDL applicants, CMV drivers, and motor carriers.

FMCSA anticipates that entities acting under the proposed flexibilities would incur cost savings via improved operational efficiency. FMCSA cannot predict the number of States that would voluntarily adopt the changes set forth in this proposal, and is therefore unable to quantify the increase in efficiency experienced by the affected entities. FMCSA estimates that the 10-year cost for training and certification of third-

party knowledge examiners could total approximately \$92 million on an undiscounted basis, \$81 million discounted at 3 percent, and \$69 million discounted at 7 percent. Annualized costs would total \$9.24 million discounted at 3 percent and \$9.24 million discounted at 7 percent (all in 2021 dollars).

### **III. ABBREVIATIONS**

ANPRM	Advance Notice of Proposed Rulemaking
ATA	American Trucking Associations
BTW	Behind-The-Wheel
CBI	Confidential Business Information
CDL	Commercial Driver's License
CDLIS	Commercial Driver's License Information System
CE	Categorical Exclusion
CFR	Code of Federal Regulations
CLP	Commercial Learner Permit
CMV	Commercial Motor Vehicle
CMVSA	Commercial Motor Vehicle Safety Act of 1986
CRST	CRST Expedited
C.R. England	C.R. England, Inc.
DOT	Department of Transportation
ELDT	Entry-Level Driver Training
E.O.	Executive Order
FMCSA	Federal Motor Carrier Safety Administration
FMCSR	Federal Motor Carrier Safety Regulations
FR	Federal Register
NAICS	North American Industry Classification System
NEPA	National Environmental Policy Act of 1969
NHDOT	State of New Hampshire Department of Transportation
NPRM	Notice of Proposed Rulemaking
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
PIA	Privacy Impact Assessment
PII	Personally Identifiable Information
Prime	New Prime, Inc.
PTA	Privacy Threshold Assessment
RFA	Regulatory Flexibility Act
The Secretary	Secretary of Transportation
SDLA	State Driver Licensing Agency
UMRA	Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

### **IV. LEGAL BASIS FOR THE RULEMAKING**

The Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapters 311, 313, and 315 as they relate to CMV operators, programs, and safety. The NPRM is based

primarily on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified at 49 U.S.C. chapter 313, which established the CDL program. The statute required the Secretary of Transportation (Secretary), after consultation with the States, to prescribe uniform minimum standards “for testing and ensuring the fitness of an individual operating a commercial motor vehicle” (49 U.S.C. 31305(a)(1)). The NPRM proposes to amend two of the CDL testing requirements and proposes new requirements for the administration of the CDL knowledge test by third-party testers and examiner. The NPRM also addresses the fitness of a CLP holder who has passed the CDL skills test to operate a CMV on public roads and the fitness of Class B CDL holders to operate an empty passenger CMV without obtaining the P endorsement.

The NPRM is also consistent with the concurrent authorities of the Motor Carrier Safety Act of 1984, as amended, codified at 49 U.S.C. 31131, et seq.; and the Motor Carrier Act of 1935, as amended, codified at 49 U.S.C. 31502. The 1984 statute granted the Secretary broad authority to issue regulations “on commercial motor vehicle safety,” including regulations to ensure that “commercial motor vehicles are...operated safely” (49 U.S.C. 31136(a)(1)). The NPRM is consistent with the safe operation of CMVs. In accordance with section 31136(a)(2), the enhanced flexibilities proposed in the NPRM will not impose any “responsibilities...on operators of commercial motor vehicles [that would] impair their ability to operate the vehicles safely.” This NPRM does not directly address medical standards for drivers (section 31136(a)(3)) or possible physical effects caused by driving CMVs (section 31136(a)(4)). FMCSA does not anticipate that drivers will be coerced (section 31136(a)(5)) if the NPRM results in the issuance of a final rule.

Title 49 U.S.C., section 31502(b), provides that “The Secretary of Transportation may prescribe requirements for – (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2)

qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.” The NPRM, which addresses certain knowledge and skills testing requirements, is related to the safe operation of motor carrier equipment.

## **V. BACKGROUND**

On May 9, 2011, FMCSA published the CDL Testing and CLP Standards final rule (76 FR 26854) (May 2011 final rule) amending the CDL knowledge and skills testing standards and establishing new minimum Federal standards for States to issue the CLP. Each of the regulatory provisions that FMCSA proposes to revise in the NPRM, discussed below, were either adopted initially (§§ 383.25, 383.79, 384.228, and 384.229) or revised (§§ 383.5 and 383.75) in the May 2011 final rule.

On July 13, 2020, the ATA submitted a petition for rulemaking to FMCSA requesting that the Agency codify three CDL-related waivers issued (and subsequently reissued) in response to the coronavirus disease 2019 (COVID-19) pandemic:

(1) Allow third-party CDL skills test examiners the ability to administer the CDL knowledge test, so long as the examiner maintains their CDL skills test examiner certification, has successfully completed a CDL skills test examiner training course, and completes a unit devoted to administering the knowledge test as required in § 384.228(c)(3);<sup>2</sup>

(2) Eliminate from the requirement in § 383.25(a)(1) that a CLP holder who has passed the CDL driving skills test be accompanied by a CDL holder with the proper CDL class and endorsements, seated in the front seat of a CMV, while the CLP holder operates a CMV on public roads or highways, provided that the CLP holder possesses evidence from a testing jurisdiction (including an authorized third-party tester) that a CLP holder

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<sup>2</sup> As discussed below in Section V.A., FMCSA withdrew the third-party knowledge examiner testing waiver on February 3, 2022.

has passed the CDL driving skills test, and provided that the CDL holder is elsewhere in the cab; and

(3) Eliminate the restriction under § 383.79(a) limiting States to the administration of driving skills tests to CDL applicants not domiciled in the testing State only if the applicant took driver training in that State. Each of the waivers was based on the need for regulatory flexibility in response to COVID-19-related service disruptions at the SDLAs and to enhance the efficiency of the commercial licensing process so that applicants could obtain a CDL more quickly. FMCSA issued the waivers after finding that granting the regulatory relief would achieve a level of safety equal to, or greater than, the level of safety achieved in the absence of the waivers, as required by 49 U.S.C. 31315(a). The waivers, discussed further below, are available in the docket of this rulemaking and can also be accessed at <https://www.fmcsa.dot.gov/emergency/covid-19-archives>.

The ATA asserted that permanent incorporation of these temporary relief measures into the Federal Motor Carrier Safety Regulations (FMCSRs) would reduce regulatory burdens, aid the ongoing COVID-19 recovery efforts, and “ensure continuity in the American supply chain.” The Agency granted ATA’s petition on November 24, 2021. The NPRM is based, in part, on ATA’s petition for rulemaking, as discussed further below

#### **A. Third Party Testing (§ 383.75)**

On April 9, 2020, FMCSA waived the CDL knowledge test examiner training requirements in § 384.228(b) and (c) for certain third-party CDL skills test examiners. The waiver allowed State-authorized third-party skills test examiners who have maintained a valid CDL test examiner certification and have previously completed a CDL skills test examiner training course satisfying the requirements of § 384.228(d) to administer the CDL knowledge test without completing a CDL knowledge test training

course. (At the time of issuance, FMCSA's existing regulatory guidance stated that third-party knowledge testing was prohibited and that if an employee of the State authorized to supervise knowledge testing is present during the testing, FMCSA regards the test as being administered by the State and not by a third party.) The waiver allowed States and SDLAs to use third-party CDL skills test examiners to continue administering CDL knowledge tests while SDLAs remained closed, unable to administer CDL knowledge tests, or operating at a diminished capacity due to the COVID-19 emergency. The Agency reissued the waiver June 22, 2020, September 18, 2020, December 15, 2020, February 16, 2021, May 26, 2021, August 31, 2021, and November 29, 2021. As discussed below, FMCSA rescinded the waiver on February 3, 2022.

On February 3, 2022, FMCSA published a notice of regulatory guidance concerning the States' use of third parties to administer CDL knowledge tests (87 FR 6045 (Feb. 3, 2022)) (February 2022 guidance). The guidance rescinded previously issued guidance, discussed above, stating that States' use of third-party knowledge test examiners was prohibited if a State employee was not present. The February 2022 guidance affirmed that FMCSA's statutes and regulations do not prohibit States from authorizing third parties to administer CDL knowledge tests, as long as SDLAs adhere to the CDL knowledge test standards and testing requirements set forth in 49 CFR part 383, subparts G and H. Currently, FMCSA does not impose any other regulatory requirements pertaining to the States' optional use of third-party knowledge testing. In the February 2022 notice, FMCSA explained it was developing an NPRM to propose regulatory standards for third-party knowledge testing and, in the interim, encouraged States opting to use third-party knowledge examiners to follow the training, certification, and record check requirements currently applicable to State knowledge examiners. This NPRM proposes those regulatory standards. The Agency subsequently issued additional guidance recommending best practices for States that allow third-party knowledge

testing, discussed further below in section VI. On February 3, 2022, FMCSA also terminated the November 29, 2021, waiver then in effect allowing States, at their discretion, to permit certified third-party skills examiners to administer the CDL knowledge test, subject to certain conditions.<sup>3</sup> The Agency withdrew the waiver because it was based on the prior (rescinded) guidance stating that third-party knowledge testing was prohibited under FMCSA's regulations.

**B. CLP Holders Who Have Passed the CDL Skills Test (§ 383.25(a))**

Pursuant to § 383.325(a), a CLP is considered a valid CDL for purposes of BTW training on public roads or highways, as long as specified minimum conditions are met. One of these conditions, set forth in § 383.25(a)(1), requires that the CLP holder be accompanied by the holder of a valid CDL with the proper CDL group and endorsement(s), who is physically present in the front seat of the vehicle next to the CLP holder or, in the case of a passenger CMV, directly behind or in the first row behind the driver, and must have the CLP holder under direct observation and supervision. In adopting this provision in the May 2011 final rule, the Agency noted that it is not safe to permit inexperienced drivers who have not passed the CDL skills test to drive unaccompanied.<sup>4</sup>

*Applications for Exemption — § 383.25(a)(1)*

On November 28, 2014, the Agency published for notice and comment C.R. England Inc.'s (C.R. England) request for an exemption from § 383.25(a)(1), which would allow CLP holders who have passed the CDL skills test and are eligible to receive a CDL to drive a truck without a CDL holder being present in the front seat, as long as the CDL holder is present elsewhere in the vehicle (79 FR 70916). FMCSA, after

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<sup>3</sup> See "Notice of Termination of Waiver for States Concerning Third Party CDL Skills Test Examiners in Response to the COVID-19 Emergency," accessible here: <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2022-02/Third%20Party%20Skills%20Tester%20Waiver%20-%20Notice%20of%20Termination%20-%20FINAL%20-%20Feb%203%2022.pdf>; also available in the docket of this rulemaking.

<sup>4</sup> 76 FR 26854, 26861 (May 9, 2011).

analyzing the exemption application and public comments received, determined that the exemption, subject to the terms and conditions imposed, would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. Subsequently, on June 11, 2015, the Agency published notice that it granted the C.R. England exemption, effective June 13, 2015, through June 12, 2017 (80 FR 33329). Under the terms and conditions of the exemption, a CLP holder who has documentation of passing the CDL skills test may drive a CMV for C.R. England without being accompanied by a CDL holder in the front seat. In granting the exemption, FMCSA concluded that CLP holders who have passed the skills test are qualified and eligible to receive a CDL. The exemption enabled CLP holders to drive as part of a team and have the same regulatory flexibility that 49 CFR 383 provides for C.R. England's team drivers with CDLs. On June 12, 2017, FMCSA published notice of its decision to grant C.R. England's request that the initial exemption be renewed for a period of 5 years, from June 13, 2017, through June 12, 2022 (82 FR 26975). The Agency subsequently renewed this exemption again for another 5 years from June 13, 2022, until June 12, 2027 (87 FR 36360). The renewals of the exemption were based, in part, on C.R. England's data demonstrating that drivers utilizing the exemption during the initial exemption period had better safety outcomes than non-exempt drivers. The Agency also requested comments on each 5-year extension. The C.R. England exemption requests and the notices of FMCSA's disposition are available in the docket for this rulemaking.

On January 5, 2016 (81 FR 291), FMCSA published notice of an application from CRST Expedited (CRST) requesting an exemption from the requirement that a CLP holder must always be accompanied by a CDL holder with the proper CDL class and endorsements, seated in the front seat of the vehicle while the CLP holder performs BTW training on public roads or highways and requested comments. On September 23, 2016, the Agency granted CRST the exemption, effective from September 23, 2016, through



September 24, 2018 (81 FR 65696). The rationale for CRST's requested exemption, and the Agency's decision to grant the exemption, was essentially the same as it was for the C.R. England exemption discussed above. On August 9, 2018, FMCSA published notice of CRST's request that FMCSA renew the initial exemption and requested public comment (83 FR 39495). On October 19, 2018, the Agency renewed CRST's exemption for a period of 5 years, effective September 23, 2018, through September 24, 2023 (83 FR 53149). On [August 7, 2023, FMCSA provisionally extended CRST's (now doing business as CRST The Transportation Solution, Inc.) exemption for an additional 5 years, through September 24, 2028, (88 FR 52241). The provisional exemption, which is subject to public comment for 30 days following publication of the exemption in the *Federal Register*, is based on CRST's assertion that it has not experienced any safety issues while operating under the exemption and will continue to monitor its safety data. The CRST exemption requests and the notices of FMCSA's disposition are available in the docket for this rulemaking.

Finally, on June 27, 2017, FMCSA granted a 5-year exemption from § 383.25(a)(1) to New Prime, Inc. (Prime) under the same terms and conditions as the exemptions issued to C.R. England and CRST, described above (82 FR 29143). In its application for exemption, Prime cited the fact that CLP holders who have passed the skills test in the State where they obtained driver training are eligible to obtain a CDL and therefore capable of safely operating a CMV. Prime stated that granting the exemption would enable CLP holders to work immediately as part of a team of drivers to transport cargo through the company's freight network before receiving their CDL credential from their State of domicile. In response to Prime's request that FMCSA extend the exemption the Agency provisionally renewed Prime's exemption for 5 years, from June 28, 2022 through June 27, 2027 (87 FR 38449), for essentially the same reasons as the provisional

renewal granted to CRST in 2022. The Prime exemption requests and the notices of FMCSA's disposition are available in the docket for this rulemaking.

*Waivers — § 383.25(a)(1)*

On March 28, 2020, FMCSA issued a waiver from the requirement under § 383.25(a)(1) that a CLP holder be accompanied by a CDL holder, with the proper CDL class and endorsements, seated in the front seat of the vehicle while the CLP holder operates a CMV on public roads or highways. Under the terms, conditions, and restrictions of the waiver, a CLP holder may operate a CMV on public roads or highways without an accompanying CDL holder present in the front seat of the vehicle, provided that the CDL holder is elsewhere in the cab. In addition, the CLP holder must be in possession of evidence from the testing jurisdiction, including an authorized third-party tester, that the CLP holder has passed the CDL driving skills test, and the CLP holder has a valid non-CDL driver's license, CLP, and medical certificate. The Agency granted the waiver to expedite CDL issuance to address supply chain disruptions related to the COVID-19 national emergency, including a shortage of CMV drivers. FMCSA re-issued the waiver on June 17, 2020, September 18, 2021, December 15, 2020, February 16, 2021, May 26, 2021, August 31, 2021, November 29, 2021, February 26, 2022, May 27, 2022, and August 31, 2022. The waiver expired on November 30, 2022.

**C. Eligibility to Take the CDL Skills Test (§ 383.25(e))**

Currently CLP holders, who have passed the required CDL knowledge test(s), are not eligible to take the CDL skills test within the 14 days following initial issuance of the CLP, as set forth in § 383.25(e). When this restriction was adopted in the May 2011 final rule, the Agency explained the mandatory waiting period was necessary to allow applicants to obtain sufficient BTW training in preparation for the skills test.

On March 24, 2020, FMCSA issued a waiver from this requirement. The terms, conditions, and restrictions of the waiver afforded States discretion to allow CLP holders

to take the CDL skills test without waiting 14 days after initial issuance of the CLP, provided the CLP holder had completed applicable ELDT requirements set forth in 49 CFR part 380, subpart F. The Agency re-issued the waiver on June 17, 2020, September 18, 2021, December 15, 2020, February 16, 2021, May 26, 2021, August 31, 2021, November 29, 2021, February 26, 2022, May 27, 2022, and August 31, 2022. The waiver expired on November 30, 2022.

**D. CDL Testing Requirements for Out-of-State Driver Training School Students (§ 383.79)**

In the May 2011 final rule, FMCSA adopted a provision permitting a State to administer the CDL skills test in accordance with 49 CFR part 383, subparts F, G, and H, to an applicant who has taken training in that State and is to be licensed in another State (i.e., the State of domicile). The testing State must electronically submit the skills test results to the State of domicile in a secure and efficient manner. The State of domicile must accept the results of a CDL skills test administered to an applicant by any other State in fulfillment of the applicant's testing requirements under § 383.71 and the State's test administration requirements under § 383.73. The Agency explained that the provision would help CLP holders obtain a CDL more efficiently by not requiring the applicant to return to their State of domicile to take the skills test after completing driver training in another State. FMCSA further noted that, since CMV driving schools routinely supply applicants with a truck or motorcoach for skills testing purposes, requiring these applicants to return to the State of domicile to take the CDL skills test would result in the applicant having to incur the cost and inconvenience of securing a CMV in which to take the test.

On March 28, 2020, FMCSA issued a waiver from the requirement that the applicant must have received training in the testing State. Under the terms and conditions of this waiver, States could elect to administer the CDL skills test to any out-of-State

CLP holder, regardless of where the applicant received driver training. FMCSA noted that because the regulatory standards set forth in 49 CFR part 383, subparts F, G, H, and J set forth uniform national knowledge and skills testing procedures and antifraud measures for the States, the waiver would have no negative impact on safety. FMCSA noted that the requirement in § 383.79(a)(2) that the State of domicile must accept the results of a driving skills test administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the CDL applicant's testing requirements under part 383, would continue to apply. The Agency re-issued the waiver on June 17, 2020, September 18, 2021, December 15, 2020,

February 16, 2021, May 26, 2021, August 31, 2021, November 29, 2021, February 26, 2022, May 27, 2022, and August 31, 2022. The waiver expired on November 30, 2022.

**E. Transport of Empty Passenger CMVs by CDL Holders Without a P Endorsement (§ 383.93(b))**

Currently the FMCSRs require that CDL holders operating passenger CMVs, including school buses, must obtain the P endorsement to transport the vehicle. In October 2017, NHDOT submitted a petition for rulemaking requesting that § 383.93 be amended to permit CDL holders who do not have a P endorsement to transport empty passenger CMVs to repair facilities. NHDOT noted that the State's rural agencies have encountered hardships based on the requirement for the driver to have a P endorsement on their CDL because, while mechanics generally have a CDL, they typically do not have a P endorsement. As a result, the State agency must either incur the expense of having the vehicle towed to the repair site or locate a driver with a P endorsement on their CDL who can drive the CMV to the repair site. NHDOT noted that the current requirement for a P endorsement does not seem necessary when there are no passengers onboard. NHDOT's petition for rulemaking is available in the docket for this rulemaking.

In 2019, the Agency received multiple requests for exemption from the requirement that a CDL holder transporting an empty bus be required to have a P endorsement. On August 13, 2019, the Agency responded to those requests by posting an enforcement notice on FMCSA's website announcing that the Agency does not intend to take enforcement action against CDL holders driving an empty bus from the manufacturer to the local distributor or in a driveaway-towaway operation without the P and S endorsements, provided the driver possesses a bill of lading showing the trip is for delivery only. The enforcement notice is available at <https://www.fmcsa.dot.gov/mission/chief-counsel/enforcement-notice>.

In March 2022, FMCSA granted NHDOT's petition for rulemaking to amend § 383.93 to permit CDL holders to operate a passenger CMV without having a P endorsement on their CDL when the driver is transporting the vehicle to a repair facility and the vehicle has no passengers onboard. The proposed amendment to § 389.93(b) is based, in part, on NHDOT's petition.

## **VI. DISCUSSION OF PROPOSED RULEMAKING**

The Agency proposes to improve the efficiency and convenience of obtaining a CDL by increasing flexibilities in certain CDL licensing processes, without negatively impacting safety. Additionally, the NPRM would strengthen the program integrity of CDL knowledge tests administered by third-party examiners and provide flexibility for CDL holders transporting empty passenger CMVs. As discussed above, the proposed revisions stem from the temporary regulatory relief FMCSA provided in response to the impact of the COVID-19 public health emergency on SDLAs' operations and on the supply chain and from petitions for rulemaking submitted by ATA and NHDOT.

### **A. Definitions**

The NPRM would add two new definitions to § 383.5: (1) *third-party knowledge examiner*, defined as "a person employed by a third-party knowledge tester who is

authorized by the State to administer the CDL knowledge tests specified in subparts G and H of this part;” and (2) *third-party knowledge tester*, defined as “a person (including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) authorized by the State to employ knowledge test examiners to administer the CDL knowledge tests specified in subparts G and H of this part.” The addition of these terms is necessary to accommodate the proposed revisions pertaining to third-party knowledge testing, as described below.

FMCSA also proposes to revise the current term *third-party tester* to read *third-party skills tester* in light of the added definition for *third-party knowledge test examiner*.

#### **B. CLP Holders Who Have Passed the Skills Test**

Currently, a CLP is considered a valid CDL to operate a CMV on public roads or highways only for the purpose of BTW training, subject to certain conditions. One of those conditions, set forth in § 383.25(a)(1), states that the CLP holder must at all times be accompanied by the holder of a valid CDL who has the proper CDL group and endorsement(s) necessary to operate the CMV. The CDL holder must at all times be physically present in the front seat of the vehicle next to the CLP holder or, in the case of a passenger CMV, directly behind or in the first row behind the driver and must have the CLP holder under observation and direct supervision. When adopting this requirement in the May 2011 final rule, FMCSA noted that it would not be safe to permit an inexperienced driver who has not passed the skills test to operate a CMV unaccompanied.<sup>5</sup>

The Agency proposes to amend § 383.25(a)(1) by adding an exception permitting a CLP holder who has passed the skills test to operate a CMV for purposes other than BTW training without having a CDL holder sitting in the front passenger seat or to

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<sup>5</sup> Ibid.

operate an empty passenger CMV, including a school bus, or an empty tank vehicle,<sup>6</sup> without a CDL holder seated directly behind, or in the first row behind, the CLP holder. The proposed exception would apply only if the CLP holder has already passed the skills test, possesses documentary evidence from the testing State of having passed the skills test, and the holder of a valid CDL is physically present in the CMV. The Agency believes the proposed revision would not negatively affect safety, because, by passing the skills test, the CLP holder has demonstrated their ability to safely operate the CMV.

While the Agency anticipates this flexibility would be used primarily by CLP holders who pass the skills test in a State other than their State of domicile, the exception also applies when a CLP holder passes the skills test in their State of domicile. For example, if a CLP holder passes the skills test administered by a third-party skills test examiner at a testing site located miles from the nearest SDLA, the CLP holder could operate a CMV under this exception. The Agency notes that CLP holders who pass the skills test in their State of domicile and receive a temporary CDL authorizing them to operate a CMV until they receive the CDL credential in the mail would not need to use the exception because they would no longer be CLP holders.

The NPRM would provide flexibility for CLP holders, who, for example, obtain driver training outside their State of domicile by allowing them to be productively employed as a CMV driver before formally receiving the CDL document issued by their State of domicile. As noted above in the discussion of the previously granted exemptions from § 383.25(a)(1), CLP holders operating under the exception could function as part of a team of drivers to transport cargo until they receive the CDL credential from their State

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<sup>6</sup> Under § 383.25(a)(5)(i) and (ii) respectively, CLP holders are prohibited from operating a CMV carrying passengers or a school bus carrying passengers. For purposes of the prohibition, Federal/State auditors and inspectors, test examiners, other trainees, and the CDL holder accompanying the CLP holder as prescribed by paragraph (a)(1), are not considered passengers. Under § 383.25(a)(5)(iii) a CLP holder may only operate an empty tank vehicle and is prohibited from operating any tank vehicle that previously contained hazardous materials that has not been purged of any residue.

of domicile. The proposed exception may therefore ease supply chain disruptions related to CMV driver shortages while retaining an adequate assurance of safety provided by the conditions under which these operations are allowed.

### **C. Eligibility to Take the CDL Skills Test**

Currently, applicants who obtain a CLP after passing the required knowledge test(s) are not eligible to take the CDL skills test during the 14 days following initial issuance of the CLP, as set forth in § 383.25(e). The purpose of this mandatory waiting period is to allow time for applicants to obtain CMV driver training in preparation for taking the skills test. On February 7, 2022, FMCSA implemented ELDT standards, including required BTW training on a driving range and on public roads, set forth in 49 CFR part 380, appendices A through D. States must verify that CLP holders completed the required ELDT before administering the skills test, as set forth in § 383.73(b)(11). The Agency therefore proposes to remove paragraph (e) because the 14-day waiting period is no longer necessary. The elimination of the mandatory waiting period would permit applicants who successfully complete the performance-based BTW training less than 14 days after initial issuance of the CLP to obtain a CDL sooner than they can today. The Agency notes that the ELDT regulations do not prohibit applicants from scheduling the skills test before they have completed ELDT, which further increases the efficiency of the skills testing process.

### **D. CDL Skills Testing for Out-of-State Applicants**

Section 383.79(a)(1) permits, but does not require, an SDLA to allow an out-of-State CDL applicant to take the CDL driving skills test if the applicant also received training in that State. The skills test must be administered in accordance with 49 CFR part 383, subparts F, G, and H and test results must be transmitted electronically directly from the testing State to the licensing State (i.e., State of domicile) in a direct, efficient, and secure manner. The NPRM proposes to remove the restriction that the out-of-State



applicant must have obtained training in the testing State to take the CDL skills test in the testing State. SDLAs thus would be permitted to administer the CDL driving skills test to out-of-State CDL applicants regardless of where the applicant received driver training. The requirement that the State of domicile accept the skills test results in fulfillment of the applicant's testing requirements under § 383.71, and the State's testing administration requirements under § 383.73, as currently set forth in § 383.79(a)(2), would remain unchanged<sup>7</sup>.

FMCSA proposes this revision so that CDL applicants can complete the required skills testing as soon as possible without compromising highway safety. Under the proposal, CLP applicants would be free to schedule their skills test according to their needs or convenience. As noted above, the testing State may, for example, be where an applicant obtained training and has access to a CMV in which to take the skills test, or it may be a neighboring State with a shorter wait list for securing a skills test appointment than the applicant's State of domicile. In any event, the requirement that training must occur in the testing State is no longer necessary with implementation of FMCSA's uniform minimum ELDT requirements on February 7, 2022. Applicants must now comply with the Federal ELDT standards, set forth in 49 CFR part 380, subpart F, before taking the skills test, thereby ensuring qualified applicants. Under the proposal, the testing State must continue to administer the skills test in accordance with existing requirements in 49 CFR part 383, subparts F, G, and H, which would ensure consistency in skills test execution.

The Agency requests comment from SDLAs concerning the operational impact of this proposed revision on either the testing State or the State of domicile.

#### **E. Third-party Knowledge Examiners and Testers**

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<sup>7</sup> 49 CFR 383.79(b) currently addresses CDL application requirements for active duty military service members. The NPRM does not propose to amend those provisions.

As explained above in Section V., in accordance with FMCSA’s regulatory guidance issued on February 3, 2022, a State’s discretionary use of third-party knowledge examiners is not prohibited by statute or regulation. States may therefore permit third-party knowledge examiners to administer the knowledge test for CDL classes and endorsements. Currently there are no regulatory requirements governing a State’s use of third-party knowledge examiners. The February 2022 guidance represented a change in the Agency’s position on States’ use of third-party knowledge examiners, rescinding previous guidance, initially issued in 1993 by the Federal Highway Administration,<sup>8</sup> FMCSA’s predecessor agency, stating that States should not permit third-party knowledge testing outside the presence of a State knowledge examiner. In explaining that change, FMCSA noted that it planned to undertake a rulemaking to establish standards for States opting to permit the CDL knowledge test to be administered by third-party examiners.

In the interim, FMCSA provided guidance to the States recommending, but not requiring, best practices for States allowing third-party knowledge testing, including following the training, certification, and record check requirements currently applicable to State knowledge examiners and the auditing and monitoring requirements currently applicable to third-party skills examiners and testers. Both the February 2022 notice of regulatory guidance and FMCSA’s subsequent “best practices” guidance are available in the docket for this rulemaking.

Consistent with the current regulatory guidance, the NPRM proposes that States permitting third-party examiners to administer CDL knowledge tests be subject to the same training (including refresher training), testing, certification, and criminal background check requirements applicable to State knowledge examiners, as set forth in § 384.228, and the auditing and monitoring requirements applicable to third-party skills

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<sup>8</sup> See, 58 FR 60734, 60739 (Nov. 17, 1993).

examiners, as set forth in § 384.229. Because certain provision of § 384.228 already apply to third-party skills examiners, FMCSA proposes to except certified third-party skills test examiners who also administer the knowledge tests from those provisions to avoid the application of duplicative requirements. Additionally, FMCSA proposes to establish the conditions under which States would be authorized to permit third-party knowledge testing, which currently apply only to third-party skills testing, as set forth in § 383.75. The NPRM would add a new requirement that third-party knowledge testing be administered electronically and securely to minimize the opportunity for negligence or fraud that may exist when knowledge tests are administered on paper.

The Agency believes application of these standards to third-party knowledge examiners and testers would further ensure the integrity of the knowledge testing program, just as the requirements in § 384.228 ensure that State knowledge examiners are adequately trained and otherwise qualified, and as §§ 384.229 and 383.75 currently ensure the integrity of third-party skills testing.

FMCSA invites comment on the proposed applicability of these standards to third-party knowledge examiners and testers.

#### **F. P Endorsement Requirements**

In accordance with § 383.93(b)(2) and (5), CDL holders transporting CMVs designed to carry passengers, including school buses, must have a P endorsement. Pursuant to § 393.93(c)(2), drivers must pass a specialized knowledge test and pass the skills test to obtain the P endorsement. Under § 383.117, the P endorsement knowledge test topics include loading/unloading passengers, dealing with unruly passengers, procedures for an emergency evacuation of the vehicle, and other operating practices and procedures. The applicant must take the P endorsement skills test in a passenger vehicle satisfying the requirements of the vehicle group (e.g., Group B). The P endorsement is intended primarily to ensure the driver has the necessary skills and knowledge to safely

transport passengers and does not otherwise require additional on-road driving skills beyond those already required to hold a CDL of the appropriate class. As discussed above, the Agency's current enforcement policy permits a CDL holder to transport a passenger CMV without having the P endorsement on their CDL when the vehicle is being delivered to a distributor from the manufacturer, or in a driveaway-towaway operation, when there are no passengers in the vehicle except the driver and the driver possesses a bill of lading or other documentation indicating the trip is for delivery only. FMCSA proposes to amend § 383.93(b) to create an exception to the requirement that CDL holders have a P endorsement to operate an empty passenger CMV, including an empty school bus, when the vehicle is being transported for delivery or in a *driveaway-towaway operation*, as defined in § 390.5T. FMCSA notes that an S endorsement is not required to operate an empty school bus because the S endorsement is required only when the bus is transporting pre-primary, primary, or secondary school students from home to school, school to home, or to and from school-sponsored events, as set forth in the definition of *school bus* in § 383.5.

The Agency proposes this change to provide enhanced flexibility in the delivery of empty passenger CMVs to a distributor or a repair facility without compromising passenger safety. FMCSA emphasizes that the underlying CDL requirements are unaffected by the proposed change; the driver must possess a CDL of the appropriate class for operating the passenger CMV, such as a Class B CDL to operate a motorcoach. As NHDOT noted in its petition for rulemaking, while mechanics generally have a valid CDL, most do not have the P endorsement. The proposed change would facilitate the limited transportation of passenger CMVs, thereby ensuring the timely delivery of the vehicle from the manufacturer or the delivery of the vehicle to effect necessary repairs. In addition, the proposed amendment would allow for timely removal of a damaged (but still drivable) vehicle from the roadside following a crash. The Agency concludes that

delivery documentation referenced in the current guidance, such as a bill of lading, need not be a regulatory requirement. As explained above, in FMCSA's judgment, an empty passenger CMV can be transported by a driver holding only a CDL of the appropriate class with no impact on passenger safety. Delivery documentation requirements would therefore impose administrative burden on the transportation of empty CMVs without improving safety.

The Agency requests comment on the proposed amendment.

#### **G. Major Issues on Which the Agency Seeks Comment**

While the Agency invites comment on all aspects of the NPRM, we are particularly interested in receiving comments that address the following issues:

1. What forms of documentation would be acceptable to demonstrate to a law enforcement officer or CMV inspector that the CLP holder operating the CMV has successfully completed the CDL skills test? What form of documentation did States acting under the authority of the waiver or exemptions provide for CLP holders who passed the skills test in their State?
2. Should a CLP holder be permitted to operate a CMV under the proposed exception to § 383.25(a)(1) until the CLP expires or should there be a shorter time period after passing the skills test that the CLP holder must obtain the CDL credential? Please explain your answer.
3. Did SDLAs relying on the waiver allowing a CLP holder to take the CDL skills test without waiting 14 days following issuance of the CLP experience a change in the applicant passing rate for the road test portion of the skills test? Were there a large number of applicants who took the skills test in your State without waiting 14 days? Did these SDLAs see a reduction in skills testing backlogs in their State?
4. Are there safety or operational concerns associated with lifting the mandatory 14-day waiting period between obtaining a CLP and taking the CDL skills test?

Would your State impose a waiting period between CLP issuance and the CLP holder taking the skills test, even if it was no longer be required? Please explain your answer.

5. The NPRM proposes to permit a State to administer the CDL skills test to an out-of-State CLP holder who has not obtained training in the testing State. If adopted, would removing this restriction have any impact on your State's decision to permit out-of-State CLP holders to take the skills test in the State? Please explain your answer.
6. With a few noted exceptions, the NPRM proposes to apply training and oversight standards currently applicable to third-party skills testers to third-party knowledge testers. Do you believe any of these existing requirements are not relevant to third-party knowledge testers? If so, please explain your answer.
7. Should State knowledge examiners be included in the auditing and monitoring requirements proposed for third-party knowledge examiners in new § 384.229(b)(2) and (3) to minimize fraud? Why or why not?
8. What form of oversight do States currently provide for State knowledge examiners? If State knowledge examiners were included within the scope of the oversight requirements proposed in new § 384.229(b)(2) and (3), would that result in additional costs for the States? If so, please explain and estimate the additional costs.
9. Do you agree or disagree with the proposed requirement that CDL knowledge tests administered by third-party examiners be securely conducted electronically to minimize fraud? Please explain your answer.
10. FMCSA is aware that several States currently permit third-party knowledge testing and that some States permitted third party knowledge testing in accordance with waivers in effect between July 1, 2020, and February 3, 2022. For these

States, do/did you permit third-party examiners to administer the tests in a physical location outside of the SDLA (e.g., a testing center)? If not, why not? If so, please describe the specific measures you take/took to ensure the integrity of the third-party knowledge testing process in a separate physical location. For example, how did/does your State verify the applicant's identity before they take the knowledge test and that applicants take the test themselves without assistance, such as reference materials?

11. Would your State consider allowing third-party knowledge testing in accordance with the new requirements proposed by the NPRM? Why or why not? What factors do you believe will influence your decision?
12. The NPRM estimates that the proposed application of training, record check, and oversight requirements to States opting to utilize third-party knowledge examiners and testers would result in additional costs to those States and has preliminarily identified cost estimates in this NPRM. Do you agree with these estimated costs? Why or why not? Do these costs change if the State already has an auditing and monitoring program for third-party skills examiners?
13. How long would States need to adapt their administrative processes and procedures to accommodate the proposed changes? Would any of the proposed changes require a modification of SDLAs' IT systems or a change in underlying State law?
14. Does the proposal to except CDL holders transporting empty passenger CMVs, including school buses, from having a P endorsement in driveway-towaway operations, or when transporting the vehicle from the manufacturer to a distributor, raise any safety concerns? Why or why not?

## **VII. SECTION-BY-SECTION ANALYSIS**

This section summarizes the changes proposed for 49 CFR parts 383 and 384 in numerical order.

**A. Proposed Changes to Part 383**

Part 383 establishes standards for the issuance and administration of CLPs and CDLs. The Agency proposes to amend Part 383 in the following ways:

**Section 383.5 Definitions.**

FMCSA proposes to add definitions of the terms *third-party knowledge examiner* (a person employed by a *third-party knowledge tester* who is authorized by the State to administer the CDL knowledge tests specified in subparts G and H of this part) and *third-party knowledge tester* (a person (including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency, or instrumentality of a local government) authorized by the State to employ third-party knowledge examiners to administer the CDL knowledge tests specified in subpart G and H of this part). Additionally, FMCSA would revise the current term *third party tester* to read *third-party skills tester* and add a hyphen to the term “third party” in the definition of *third party skills test examiner*.

**Section 383.25 Commercial learner’s permit (CLP).**

FMCSA proposes to revise § 383.25 by adding an exception to paragraph (a)(1) that would permit CLP holders who have passed the relevant CDL skills test(s) and possess documentary evidence of having done so, to operate a CMV on public roads or highways for purposes other than BTW training, as long as a CDL holder with the proper CDL class and endorsements to operate the CMV is physically present in the vehicle.

The Agency also proposes to amend § 383.25 by removing paragraph (e), which states that CLP holders are not eligible to take the CDL skills test in the 14 days following initial issuance of the CLP.

**Section 383.75 Third party testing.**



The NPRM proposes to amend § 383.75 by consolidating existing paragraphs (a) through (c) into new paragraph (a) and adding a new paragraph (b). Proposed new paragraph (a) would contain the current auditing and monitoring requirements applicable to third party skills testers as set forth in current paragraphs (b) and (c). New paragraph (b) would contain auditing and monitoring requirements for States choosing to authorize third party knowledge testers and examiners. Section 383.75 currently imposes auditing and monitoring requirements only on States that rely on third party skills testers and examiners. The proposed oversight requirements in new paragraph (b) governing a State's use of third party knowledge testers would be based on the relevant provisions now applicable to third party skills testers. FMCSA also proposes to add a requirement that all knowledge tests administered by third party examiners be conducted electronically. The NPRM also proposes that the title of § 383.75 be changed from "Third party testing" to "Third party skills and knowledge testing" to reflect the proposed addition of new paragraph (b).

**Section 383.79 Driving skills testing of out-of-State students; knowledge and driving skills testing of military personnel.**

FMCSA proposes to revise § 383.79(a)(1), by removing the restriction requiring an applicant taking the CDL skills test in a State other than the licensing State (i.e., the applicant's State of domicile) to have obtained training in the testing State. Under the proposed revision, CDL applicants would be able to take the skills test in any State, regardless of where they obtained driver training.

**Section 383.93 Endorsements**

The NPRM proposes to amend § 383.93(b), which requires drivers to obtain State-issued endorsements to their CDL when operating specified type of CMVs, including passenger CMVs (§ 383.93(b)(2)) and school buses (§ 383.93(b)(5)). The amendment would create an exception from the requirement that a driver obtain a P

endorsement when operating passenger CMVs, including school buses, when the vehicle is empty of all passengers other than the driver and is being transported from the manufacturer to a distributor, or in a *driveway-towaway operation*, as defined in § 390.5T.

## **B. Proposed Changes to Part 384**

Part 384 establishes standards and procedures to ensure that the States comply with 49 U.S.C. 31311(a), which sets forth the requirements for States' participation in the CDL program and specifies the consequences of State noncompliance. The Agency proposes to amend part 384 in the following ways:

### **Section 384.228 Examiner training and record checks.**

This section requires States to follow certain examiner training and record check protocols for State knowledge and skills examiners and third-party skills examiners. The Agency proposes to include third party knowledge examiners within the scope of the training and record check requirements now applicable to State knowledge examiners, as set forth in § 384.228(a) through (c) (training standards and content, completion of formal training course, passing the course exam, and the State's certification of the examiner); (f)(1) (completion of refresher training every four years); (f)(3) and (4) (refresher training course content); (h) (nationwide criminal background checks); (i) (State's retention of records related to examiner background checks training, and certification); (j) State's rescission of examiner certification for any examiner failing to complete mandatory refresher training; and (k) (required examiner training content may be supplemented by State-specific material related to administering CDL knowledge and skills tests). Most of these requirements currently apply to State and third-party skills test examiners as well as State knowledge examiners. The Agency does not intend to impose duplicative training and record check requirements on certified skills test examiners who also administer knowledge tests. Accordingly, to the extent that certified skills test

examiners are already subject to the provisions of § 384.228 listed above, States would be excepted from the training and record check requirements regarding third-party knowledge examiners.

Additionally, FMCSA proposes to remove paragraph (g), which requires States to conduct criminal background checks of all skills test examiners prior to certifying them to administer skills tests. This provision, originally adopted in the May 2011 final rule, is no longer necessary in light of current paragraph (h), subsequently amended in 2013 to require, in paragraph (h)(1), that criminal background checks be completed for all State and third-party test examiners before hiring and, in paragraph (h)(2), to require that criminal background checks be completed for any current State or third-party test examiner who has not had a criminal background check. FMCSA would also revise current paragraph (h)(1) by adding an exception from its requirements for current third-party skills testers who have maintained their CDL test examiner certification and have already been subject to a nationwide criminal background check. The remaining paragraphs would be renumbered accordingly.

#### **Section 384.229 Skills examiner auditing and monitoring.**

FMCSA proposes to amend § 384.229, which requires States to conduct auditing and monitoring of State and third-party skills examiners. The proposal would divide this section into two paragraphs, one setting forth the requirements currently applicable to third-party skills test examiners, which would remain unchanged, and the other setting forth proposed auditing and monitoring requirements applicable to third-party knowledge examiners.

### **VIII. SEVERABILITY**

As discussed above in Section III. Legal Basis, FMCSA is authorized by 49 U.S.C. chapter 313 to promulgate regulations governing the issuance of CDLs. The NPRM is also based on several concurrent authorities to establish minimum standards for

the fitness of drivers operating CMVs and to promulgate standards for the safe operation of CMVs.

Consistent with these statutory authorities, the NPRM proposes revisions to 49 CFR part 383, Commercial Licensing Standards; Requirements and Penalties and 49 CFR part 384, State Compliance with Commercial Driver's License Program. The primary purpose of the NPRM is to enhance the flexibility and efficiency of the CDL program by proposing the removal of several current regulatory restrictions without compromising safety. The NPRM would improve safety by proposing measures to establish qualification requirements for third-party knowledge examiners and monitoring and oversight requirements for States choosing to utilize third-party knowledge testing.

The revisions proposed in the NPRM primarily pertain to discrete regulatory requirements proposed in 49 CFR parts 383 and 384. Therefore, FMCSA finds that the various provisions of the NPRM pertaining to 49 CFR part 383 and the proposed change to part 384 are severable and able to operate functionally if severed from each other in a final rule resulting from this NPRM. In the event a court were to invalidate one or more of the unique provisions of a final rule, the remaining provisions should stand, thus allowing FMCSA to continue to fulfill its Congressionally authorized role of regulating the issuance of CDLs and promoting the safe operation of CMVs.

## **IX. REGULATORY ANALYSES**

### **A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures**

The Office of Information and Regulatory Affairs (OIRA) determined that this proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and

by E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. This rule is also not significant within the meaning of DOT regulations (49 CFR 5.13(a)). Accordingly, OMB has not reviewed it under these Orders.

This proposal would (1) remove the restriction allowing a State to administer the CDL skills test to a CLP holder who is domiciled in another State only if the applicant obtained training in the testing State; (2) permit a CLP holder who has passed the CDL skills test to operate a CMV on public roads for purposes other than BTW training, provided the CLP holder has evidence of passing the CDL skills test and a qualified CDL holder is physically present in the CMV; (3) eliminate the requirement that an applicant wait at least 14 days to take the CDL skills test following initial issuance of the CLP; (4) establish qualification requirements for third-party CDL knowledge examiners and auditing and monitoring requirements for States that authorize third-party knowledge testing; and (5) remove the requirement that a CDL holder have a P endorsement when a passenger CMV is being transported from the manufacturer to a distributor, or in a driveaway-towaway operation, and the vehicle is not carrying any passengers. As discussed below, FMCSA believes these changes would improve the efficiency and convenience of CDL issuance, provide needed flexibility for CLP holders who have demonstrated their ability to safely operate a CMV by passing the CDL skills test, and improve highway safety by ensuring the integrity of third-party CDL knowledge testing. The proposed rule could affect States, third-party knowledge examiners, CDL applicants, P endorsement applicants, and motor carriers.

## **States**

States that currently choose to allow third-party knowledge testing in their jurisdiction could be impacted by this rule to the extent that the proposed requirements differ from current State practices. In accordance with regulatory guidance adopted on

February 3, 2022, States may authorize the use of third-party knowledge examiners as long as they adhere to the CDL knowledge test standards and requirements set forth in 49 CFR part 383, subparts G and H. FMCSA does not presently impose other regulatory requirements on States' use of third-party knowledge testing; the NPRM would establish such standards. FMCSA is aware that following publication of the February 3 guidance, at least one State passed legislation authorizing third-party skills testers to administer the CDL knowledge tests in that State. The Agency does not know whether other States currently permit third-party knowledge testing and requests comment from States that may currently allow this practice. Under the proposal, the decision by an SDLA to permit third-party examiners to provide knowledge tests would be discretionary, and FMCSA is therefore unable to predict how many SDLAs would permit third-party examiners to administer the CDL knowledge tests. FMCSA cannot predict the number of States that would permit third-party testing as proposed in the NPRM, but requests comment on the number of States that would do so.

### **Third-Party Examiners**

Based on a survey conducted by American Association of Motor Vehicles Administrators (AAMVA) to which 38 States responded,<sup>9</sup> FMCSA estimates that there are over 3,000 third-party skills test examiners. FMCSA assumes that some of these existing third-party skills examiners would also become third-party knowledge examiners, but does not have a basis to estimate the number of third-party knowledge examiners resulting from this rule.

### **CDL Knowledge Test Applicants**

A CDL applicant must hold a CLP in order to take the CDL skills test. FMCSA estimates that approximately 600,000 to 700,000 CLPs are issued annually nationwide.

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<sup>9</sup> Information collected by U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA) in March 2021 from the American Association of Motor Vehicles Administrators (AAMVA).

This estimate is based primarily on information from the Commercial Driver's License Information System (CDLIS), a nationwide computer system, administered by the American Association of Motor Vehicle Administrators, that enables SDLAs to ensure that each commercial driver has only one driver's license and one complete driver record. A master pointer record is typically added to CDLIS within 10 days of issuing a CLP to a driver who is believed to have never held one previously, and is therefore a reasonable proxy for estimating the number of CDL knowledge test applicants. However, FMCSA does not anticipate that all of these CDL knowledge test applicants would be impacted by this rule.

FMCSA notes that, because the Agency cannot estimate the number of States that would choose to permit third-party knowledge examiners in accordance with the proposed rule, the extent to which this population would be affected by the proposed rule is unknown.

### **Motor Carriers**

The proposal would permit a CLP holder who has passed the CDL skills test but has not yet been issued the CDL credential to operate a CMV for purposes other than BTW training without being accompanied by a CDL holder in the front passenger seat or, in the case of a passenger-carrying CMV, directly behind or in the first row behind the driver, as long as a CDL holder is present in the vehicle. Motor carriers may be affected by this proposal, if they currently employ CLP drivers that have passed the skills test but have not yet obtained the CDL credential from their State of domicile. Other than the number of impacted drivers estimated in the exemption applications submitted by CRST, CR England, and Prime, FMCSA is unable to predict the overall population of drivers that could be impacted by this provision. Additionally, FMCSA does not know how many CLP holders have passed their skills test but have not yet received their CDL credential, or how many trips would be affected by this proposed change.

## Costs, Benefits and Transfer Payments

### Costs

This proposal would remove current regulatory restrictions related to CDLs and CLPs and impose standards for third-party knowledge examiners and monitoring and auditing requirements applicable to States choosing to allow third-party knowledge testing. It could result in costs to third-party examiners and States, and may result in savings to motor carriers and drivers.

Under the proposal, third-party knowledge examiners would be required to take a 20-hour training course every 3 years in order to administer knowledge tests. There is not a specific skill set required to be a knowledge test examiner, and many different occupations could proctor knowledge test exams. For illustrative purposes, FMCSA estimates that training and development managers (BLS 11-3131) with a fully loaded wage rate of \$99 ( $\$99 = \$57.69 + (\$57.69 \times 0.505 \text{ fringe benefit rate}) + (\$57.69 \times 0.21 \text{ overhead rate})$ ) would undergo the 20-hour training course and become third-party knowledge test examiners.<sup>10</sup> FMCSA assumes that this training is provided online and would not require travel expenses. Therefore, the cost for each examiner would be \$1,980 ( $\$99 \times 20$ ). FMCSA estimates that 1/3 of the 14,000 examiners, or 4,667, would take the training each year, at a cost of approximately \$9.2 million per year, or \$92.4 million over the 10-year analysis period. FMCSA estimates that the 10-year cost of this provision would total \$81 million discounted at 3 percent, and \$69 million discounted at 7 percent. Annualized costs would total \$9.24 million discounted at 3 percent and \$9.24 million discounted at 7 percent (all in 2021 dollars). FMCSA proposes to further require that the State certify that each third-party knowledge examiner has completed a formal CDL knowledge test examiner training course.

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<sup>10</sup> U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS). *Occupational Employment and Wage Statistics (OEWS). National. May 2022*. Available at: [https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm) (accessed September 8th, 2023).



FMCSA is proposing that knowledge tests be administered electronically but is not proposing requirements on the physical location of the knowledge testing site. For instance, FMCSA could require that knowledge tests are taken in person at a designated physical location other than the SDLA or allow third-party knowledge test administrators to proctor exams without a State employee being present. FMCSA requests comments on these alternatives, and whether remote physical testing site requirements should be adopted.

States that opt to allow third-party knowledge testing would be required to develop an auditing and monitoring program to ensure the integrity of the knowledge testing program. FMCSA assumes that States with existing third-party skills testing programs already have auditing programs in place. FMCSA requests comment on the additional burden of creating a third-party knowledge testing auditing process for these States. FMCSA also requests comment on whether States that do not have third-party skills testing programs would initiate a third-party knowledge testing program, and on the cost to set up and administer an auditing program. Further, at least one State has indicated that the proposed changes could reduce demands on SDLA service centers, resulting in a cost savings, by a reduction in State-administered knowledge exams. FMCSA requests comment on this issue. FMCSA invites comment on whether the Agency should include State knowledge examiners in the auditing and monitoring requirements proposed for third-party knowledge examiners, which would be a new requirement imposed on States. FMCSA seeks comment on costs associated with any existing auditing and monitoring programs that States may have for knowledge test examiners, and on the additional costs that would result should FMCSA impose such requirements.

The proposal would result in cost savings for motor carriers and drivers because, after the CLP holder passes the skills test, the CDL holder would be allowed to rest in the sleeper berth, thereby saving on-duty time under the HOS rules that would otherwise be

lost riding in the passenger seat, overseeing the CLP holder. The proposed change would therefore allow the CLP holder, with proof of a passing CDL skills test, to operate the vehicle in a wage-earning capacity. FMCSA does not know how many CLP drivers pass their skills test but do not immediately receive their CDL credential, nor does FMCSA know the number of vehicle miles or trips that might be impacted by this rule. As such, FMCSA cannot estimate the cost savings that could result from this provision but requests comment on the impact of this proposed change.

Lastly, this proposed rule clarifies that CDL holders who have not obtained the P endorsement may operate an empty passenger CMV, including a school bus, from the manufacturer to the distributor or in a driveaway-towaway operation. This proposed change, which is consistent with FMCSA's current enforcement policy, reflects the fact that the P endorsement is intended primarily to ensure the driver has the necessary skills and knowledge to safely transport and evacuate passengers. The proposed regulatory change would clarify that the driver is not required to have a P endorsement when transporting an empty passenger CMV, which could allow for an increase in cost savings without impacting passenger safety. Motor carriers would no longer need to incur the expense of having the vehicle towed to the repair site or locating a driver with a P endorsement on their CDL who can drive the CMV to the repair site. The proposed amendment would ensure consistency of enforcement and broaden stakeholder awareness of this flexibility.

## **Benefits**

As discussed above, FMCSA believes that the proposal would improve highway safety by enhancing the integrity of third-party CDL knowledge testing. The proposal would also create positive change for drivers, industry stakeholders, and SDLAs by expanding knowledge and skills test accessibility, permitting CDL holders to operate empty passenger CMVs in limited circumstances without obtaining the P endorsement,

and eliminating the 14-day waiting period between receiving a CLP and taking the CDL skills test.

Third-party knowledge testing would provide additional flexibility for CLP applicants, who may be able to obtain their CLP sooner from a third-party examiner than by taking the tests at the SDLA. The knowledge tests administered by third-party examiners would be subject to the same testing standards and methods used by State knowledge examiners, as set forth in 49 CFR part 383 subparts G and H. The NPRM proposes that knowledge tests given by third parties be administered electronically, minimizing opportunity for fraud.

The proposal would expand the States' discretion to provide skills testing to out-of-State applicants, regardless of the State in which training was obtained. This provision would expand skills test accessibility, allowing applicants to obtain a CDL sooner by scheduling the skills test in a State with shorter waiting times. All States must conduct skills testing, in accordance with the uniform minimum requirements set forth in 49 CFR part 383, subparts G and H. Thus, the State in which skills testing occurs does not impact how the driver's skills are evaluated during the test.

The P endorsement is intended to ensure that the driver has the knowledge and skills necessary to safely transport passengers and to evacuate the CMV in case of emergency. The proposed change would therefore enhance flexibility in the transport of empty passenger CMVs to distributors, dealers, purchasers, and repair facilities without compromising passenger safety.

Lastly, the elimination of the mandatory 14-day waiting period between initial issuance of the CLP and taking the CDL skills test would permit applicants who successfully complete the performance-based BTW range and road training in less than 14 days to obtain a CDL and be productively employed sooner than they can today. Following the implementation of the ELDT regulations in February 2022, this waiting

period is no longer necessary. The Agency has not identified any other positive or negative benefits to society that would result from this proposed change to § 383.25(e).

### **Transfer Payments**

There are also certain transfer payment effects that may occur as a result of this proposed rule. Transfer payments are monetary payments from one group to another that do not affect total resources available to society, and therefore do not represent actual costs or benefits of the rule. SDLAs currently incur costs and receive fees to administer knowledge tests to CLP applicants. If a State chooses to allow third-party examiners to administer the knowledge test to CLP applicants, CLP applicants would no longer be required to take the knowledge test at the SDLA, streamlining the process to begin CDL driver training. In this instance, the cost of providing the knowledge test and the associated revenue for the provision of that service would be transferred to the third-party tester. The Agency is unable to predict the amount of these transfer payments as they would occur only in those States allowing third-party examiners to administer the knowledge test.

### **B. Congressional Review Act**

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).<sup>11</sup>

### **C. Advance Notice of Proposed Rulemaking**

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or proceed with a negotiated rulemaking, if a proposed rule is likely to lead to the promulgation of a major rule. As this proposed rule is not

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<sup>11</sup> A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (49 CFR 389.3).

likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

#### **D. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>12</sup> requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

##### *Affected Small Entities*

This rule has the potential to impact States, third-party knowledge examiners, CDL skills test applicants, and motor carriers. Under the standards of the RFA, as amended, States are not small entities because they do not meet the definition of a *small entity* in section 601 of the RFA. Specifically, States are not small governmental jurisdictions under section 601(5) of the RFA, both because State government is not among the various levels of government listed in section 601(5), and because, even if this were the case, no State, including the District of Columbia, has a population of less than 50,000, which is the criterion to be a small governmental jurisdiction under section 601(5) of the RFA.

CDL applicants are not considered small entities because they do not meet the definition of a *small entity* in Section 601 of the RFA. Specifically, drivers are considered

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<sup>12</sup> Pub. L. 104-121, 110 Stat. 857 (Mar. 29, 1996).

neither a small business under Section 601(3) of the RFA nor a small organization under Section 601(4).

Under the RFA, as amended, motor carriers and third-party knowledge testers may be considered small entities based on the SBA-defined size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS). This rule could affect motor carriers in many different industry sectors in addition to the Transportation and Warehousing sector (NAICS sectors 48 and 49); for example, the Construction sector (NAICS sector 23), the Manufacturing sector (NAICS sectors 31, 32, and 33), and the Retail Trade sector (NAICS sectors 44 and 45). FMCSA anticipates that third-party knowledge testers would largely be employed by testing entities that currently employ third-party skills examiners. Many third-party skills examiners are also training providers at universities, technical and trade schools, and other training focused institutions that operate within the Educational Services sector (NAICS sector 61). Industry groups within these sectors have size standards for qualifying as small based on the number of employees (e.g., 500 employees), or on the amount of annual revenue (e.g., \$27.5 million in revenue). Not all entities within these industry sectors will be impacted by this rule, and therefore FMCSA cannot determine the number of small entities based on the SBA size standards.

### *Impact*

CDL knowledge test examiners may incur training costs in order to provide knowledge test exams to CLP applicants. To determine if this impact would be significant, FMCSA considers the impact as a percentage of annual revenue and estimates the impact to be significant if it surpasses one percent of revenue. For each knowledge test examiner, the knowledge tester would incur an opportunity cost of approximately \$1,980 ( $\$99 \times 20$  hours). The knowledge test examiner would need to

have annual revenue below \$198,000 ( $\$1,980 \div 0.01$ ) in order for this impact to reach the threshold of significance. Similarly, if a knowledge test examiner employed 10 affected employees, the annual opportunity cost would be \$19,800 ( $\$99 \times 20 \text{ hours} \times 10$  examiners) and would need to have annual revenue below \$1.9 million in order for the impact to be considered significant. FMCSA considers it unlikely that a CDL knowledge tester would be able to operate with such low revenues, and as such does not anticipate that this rule would result in a significant impact on small CDL knowledge testers.

Motor carriers could experience opportunity cost savings if team drivers can work more efficiently when a driver with a CLP can operate the CMV after passing the skills test but before receiving the CDL credential. For example, a CDL holder could rest in the sleeper berth while the CLP driver with proof of a passing CDL skills test could operate the vehicle in a wage-earning capacity. FMCSA does not know how many CLP drivers pass their skills test but do not immediately receive their CDL credential, nor does FMCSA know the number of vehicle miles or trips that might be impacted by this rule. As such, FMCSA cannot estimate the cost savings that could result from this provision but anticipates that any cost savings would be below one percent of annual revenue for most motor carriers.

Therefore, I hereby certify that this rule will not have a significant impact on a substantial number of small entities.

#### **E. Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>13</sup> FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options

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<sup>13</sup> Pub. L. 104–121, 110 Stat. 857 (Mar. 29, 1996).

for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

**F. Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal Government, in the aggregate, or by the private sector of \$192 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2022 levels) or more in any 1 year. Though this NPRM would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

**G. Paperwork Reduction Act**

This proposed rule contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c), *collection of information* comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information



collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

**TITLE:** Commercial Driver Licensing and Testing Standards.

**OMB CONTROL NUMBER:** 2126-0011.

**SUMMARY OF THE INFORMATION COLLECTION:** This is to request OMB's approval for the revision of the information collection titled "Commercial Driver Licensing and Testing Standards," which is currently due to expire on April 30, 2025. This ICR is being updated to account for the proposed changes to regulatory requirements in the "Amendments to the Commercial Driver's License Requirements; Increased Flexibility for Testing and for Drivers After Passing the Skills Test" NPRM, as well as updated and more recent data that has become available following the approval of the current supporting statement. This current submission includes all information collection requirements contained in title 49 CFR part 383, titled "Commercial Driver's License Standards; Requirements and Penalties" and title 49 CFR part 384 titled, "State Compliance with Commercial Driver's License Program."

**NEED FOR INFORMATION:** The licensed drivers in the United States deserve reasonable assurances that their fellow motorists are properly qualified to drive the vehicles they operate. In section 12005 of the CMVSA, the Secretary is required to develop minimum Federal standards for testing and licensing of operators of CMVs. Section 12007 of the Act also directed the Secretary, in cooperation with the States, to develop a clearinghouse to aid the States in implementing the one driver, one license, and one driving record requirement. This clearinghouse is known as CDLIS.

The CMVSA further required each person who has their CDL suspended, revoked, or canceled by a State, or who is disqualified from operating a CMV for any

period, to notify his or her employer of such actions. Drivers of CMVs must notify their employers within 1 business day of being notified of the license suspension, revocation, and cancellation, or of the lost right to operate or disqualification. These requirements are reflected in 49 CFR part 383, titled “Commercial Driver's License Standards; Requirements and Penalties.” Specifically, § 383.21 prohibits a person from having more than one license; § 383.31 requires notification of convictions for driver violations; § 383.33 requires notification of driver’s license suspensions; § 383.35 requires notification of previous employment; and § 383.37 outlines employer responsibilities. Section 383.111 requires the passing of a knowledge test by the driver and § 383.113 requires the passing of a skills test by the driver. Section 383.115 contains the requirement for the double/triple trailer endorsement; § 383.117 contains the requirement for the P endorsement; § 383.119 contains the requirement for the tank vehicle endorsement; and § 383.121 contains the requirement for the hazardous materials endorsement.

Currently, FMCSA is proposing to revise the regulations at 49 CFR 383 and 384 to increase flexibility for SDLAs and CDL applicants by: (1) removing the restriction allowing a State to administer the CDL skills test to a CLP holder who is domiciled in another State only if the applicant obtained training in the testing State; (2) permitting a CLP holder who has passed the CDL skills test to operate a CMV on public roads for purposes other than BTW training, provided the CLP holder has evidence of passing the CDL skills test and a qualified CDL holder is physically present in the CMV; (3) eliminating the requirement that an applicant wait at least 14 days to take the CDL skills test following initial issuance of the CLP; and (4) removing the requirement that CMV drivers must have a passenger (P) endorsement to transport CMVs designed to carry passengers, including school buses, when the vehicle is being transported in a driveway-towaway operation and the vehicle is not carrying any passengers. Additionally, the

NPRM proposes that third-party knowledge examiners be subject to the training, certification, and record check standards currently applicable to State knowledge examiners and the auditing and monitoring requirements now applicable to third-party skills testers.

**PROPOSED USE OF INFORMATION:** State officials use the information collected on the license application form (§ 383.71) that is posted to the CDLIS driver record, the information collected on the CLP application form that is posted to the CDLIS driver record (§ 383.71), and the conviction and disqualification data posted to the CDLIS driver record (§ 383.73) to prevent ineligible, not-qualified, and/or disqualified CLP and CDL holders and applicants from operating CMVs on the nation's highways. State officials are required to adopt and administer an FMCSA approved program for testing and ensuring the fitness of persons to operate a CMVs (§ 384.201). State officials are also required to administer knowledge and skills tests to CDL driver applicants (§ 384.202). The driver applicant is required to correctly answer at least 80 percent of the questions on each knowledge test in order to achieve a passing score on that test. To achieve a passing score on the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in the regulations. During State CDL compliance reviews, FMCSA officials review this information to ensure that the provisions of the regulations are being carried out. Without the aforementioned requirements, there would be no uniform control over driver licensing practices to prevent uncertified and/or disqualified drivers from being issued a CLP or CDL and to prevent unsafe drivers from spreading their convictions among several licenses in several States and remaining behind the wheel of a CMV. Failure to collect this information would render the regulations unenforceable.

**DESCRIPTION OF THE RESPONDENTS:** Drivers with a CLP or CDL and SDLAs.

**NUMBER OF RESPONDENTS:** 7,753,798 (7,712,074 CDL + 41,724 SDLAs)

**FREQUENCY OF RESPONSE:** Annual

**BURDEN OF RESPONSE:** 26,206,651 responses (7,925,642 CDL + 18,281,008 SDLAs). The associated cost burden is \$103,725,614 (\$71,424,225 CDL + \$32,301,389 SDLAs)

**ESTIMATE OF TOTAL ANNUAL BURDEN:** 2,858,202 hours (2,067,271 CDL + 790,931 SDLAs)

In accordance with 44 U.S.C. 3507(d), FMCSA will submit the proposed information collection amendments to OIRA at OMB for its approval.

The Agency requests comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

#### **H. E.O. 13132 (Federalism)**

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. The changes proposed in the NPRM would increase flexibility for SDLAs in scheduling of CDL skills testing appointments and for States opting to offer CDL skills testing to out-of-State applicants. The NPRM could also reduce the number of P endorsements issued by the SDLAs. The proposed training, record check, and oversight requirements, currently applicable to States opting to rely on third-party skills testers, similarly would apply only

to States choosing to permit third-party knowledge testing. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

## **I. Privacy**

The Consolidated Appropriations Act, 2005,<sup>14</sup> requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information (PII). The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,<sup>15</sup> requires Federal agencies to conduct a Privacy Impact Assessment (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The Agency will complete a PTA to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA has been submitted to FMCSA's Privacy Officer for review and preliminary adjudication and to DOT's Privacy Officer for review and final adjudication.

## **J. E.O. 13175 (Indian Tribal Governments)**

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<sup>14</sup> Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

<sup>15</sup> Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

**K. National Environmental Policy Act of 1969**

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraphs (6)(s)(6) and (7). The categorical exclusions (CEs) in paragraphs (6)(s)(6) and (7) cover requirements pertaining to providing knowledge and skills tests to qualified applicants for commercial drivers' licenses and requirements for State-issued commercial license documentation. The proposed requirements in this rule are covered by these CEs.

**List of Subjects**

**49 CFR Part 383**

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

**49 CFR Part 384**

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

Accordingly, FMCSA proposes to amend 49 CFR chapter III, parts 383 and 384 as follows:

**PART 383 - COMMERCIAL DRIVER'S LICENSE STANDARDS;**

**REQUIREMENTS AND PENALTIES**

1. The authority citation for part 383 continues to read as follows:

**Authority:** 49 U.S.C. 521, 31136, 31301 et seq., and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 23019 of Pub. L. 117–58, 135 Stat. 429, 777; and 49 CFR 1.87.

2. Amend § 383.5 by:

a. Adding, in alphabetical order, definitions for *third-party knowledge examiner*, *third-party knowledge tester*, and *third-party skills tester*;

b. Adding a hyphen between the words “third” and “party” in the definition of *third party skills test examiner*; and

b. Removing the definition of *third party tester*.

The additions read as follows:

#### **§ 383.5 Definitions.**

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*Third-party knowledge examiner* means a person employed by a third-party tester who is authorized by the State to administer the CDL knowledge tests specified in subparts G and H of this part.

*Third-party knowledge tester* means a person (including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) authorized by the State to employ knowledge test examiners to administer the CDL knowledge tests specified in subparts G and H of this part.

\* \* \* \* \*

*Third-party skills tester* means a person (including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency, or instrumentality of a local government) authorized by the State to employ skills test examiners to administer the CDL skills tests specified in subparts G and H of this part.

\* \* \* \* \*

3. Amend § 383.25 by:

- a. Revising paragraph (a)(1); and
- b. Removing paragraph (e).

The revision reads as follows:

**§ 383.25 Commercial learner's permit (CLP).**

(a) \* \* \*

(1) The CLP holder is at all times accompanied by the holder of a valid CDL who has the proper CDL group and endorsement(s) necessary to operate the CMV. The CDL holder must at all times be physically present in the front seat of the vehicle next to the CLP holder or, in the case of a passenger vehicle, directly behind or in the first row behind the driver and must have the CLP holder under observation and direct supervision.

*Exception:* A CLP holder who has passed the CDL skills test may operate a CMV on public roads or highways for purposes other than behind-the wheel training without the holder of a valid CDL of the proper class and with all proper endorsements being present in the front seat of the CMV or, in the case of a passenger vehicle, directly behind or in the first row behind the driver, provided the CDL holder is physically present elsewhere in the CMV. The CLP holder must also possess documentary evidence from the testing State (including a third-party skills tester authorized by the State) that they have passed the CDL skills test.

\* \* \* \* \*

4. Revise § 383.75 to read as follows:

**§ 383.75 Third-party skills and knowledge testing.**

(a) *Third-party skills tests.* A State may authorize a third-party tester to administer the skills tests as specified in subparts G and H of this part, if the following conditions are met:



(1) The skills tests given by the third-party are the same as those that would otherwise be given by the State using the same version of the skills tests, the same written instructions for test applicants, and the same scoring sheets as those prescribed in subparts G and H of this part.

(2) The State must conduct an on-site inspection of each third-party skills tester at least once every 2 years, with a focus on examiners with irregular results such as unusually high or low pass/fail rates.

(3) The State must issue the third-party tester a CDL skills testing certificate upon the execution of a third-party skills testing agreement.

(4) The State must issue each third-party CDL skills test examiner a skills testing certificate upon successful completion of a formal skills test examiner training course prescribed in § 384.228.

(5) The State must, at least once every 2 years, do one of the following for each third-party skills examiner:

(i) Have State employees covertly take the skills tests administered by the third-party as if the State employee were a test applicant;

(ii) Have State employees co-score along with the third-party examiner during CDL skills tests to compare pass/fail results; or

(iii) Re-test a sample of drivers who were examined by the third-party to compare pass/fail results.

(6) The State must take prompt and appropriate remedial action against a third-party skills tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract.

(7) A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner.

(8) The State must revoke the skills testing certification of any examiner who does not conduct skills test examinations of at least 10 different applicants per calendar year. *Exception:* Examiners who do not meet the 10-test minimum must either take the refresher training specified in § 384.228 of this chapter or have a State examiner ride along to observe the third-party examiner successfully administer at least one skills test.

(9) The State has an agreement with the third-party tester containing, at a minimum, provisions that:

(i) Allow FMCSA, or its representative, and the State to conduct random examinations, inspections, and audits of its records, facilities, and operations without prior notice;

(ii) Require that all third-party skills test examiners meet the qualification and training standards of § 384.228;

(iii) Allow the State to do any of the following:

(A) Have State employees covertly take the skills tests administered by the third-party as if the State employee were a test applicant;

(B) Have State employees co-score along with the third-party examiner during CDL skills tests to compare pass/fail results; or

(C) Have the State re-test a sample of drivers who were examined by the third-party.

(iv) Reserve unto the State the right to take prompt and appropriate remedial action against a third-party skills tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract;

(v) Require the third-party skills tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third-party or one or more of its examiners is involved in fraudulent activities

related to conducting skills testing of applicants for a CDL. *Exception:* A third-party tester that is a government entity is not required to maintain a bond;

(vi) Require the third-party tester to use only CDL skills examiners who have successfully completed a formal CDL skills test examiner training course as prescribed by the State and have been certified by the State as a CDL skills examiner qualified to administer CDL skills tests;

(vii) Require the third-party skills tester to use designated road test routes that have been approved by the State;

(viii) Require the third-party tester to submit a schedule of CDL skills testing appointments to the State no later than two business days prior to each test; and

(ix) Require the third-party skills tester to maintain copies of the following records at its principal place of business:

(A) A copy of the State certificate authorizing the third-party tester to administer a CDL skills testing program for the classes and types of commercial motor vehicles listed;

(B) A copy of each third-party examiner's State certificate authorizing the third-party examiner to administer CDL skills tests for the classes and types of commercial motor vehicles listed;

(C) A copy of the current third-party skills tester agreement;

(D) A copy of each completed CDL skills test scoring sheet for the current year and the past 2 calendar years;

(E) A copy of the third-party tester's State-approved road test route(s); and

(F) A copy of each third-party examiner's training record.

(x) Require the third-party tester to notify the State driver licensing agency through secure electronic means when a driver applicant passes skills tests administered by the third-party tester.

(b) *Third-party knowledge tests.* A State may authorize a third-party tester to administer the knowledge tests as specified in subparts G and H of this part, if the following conditions are met:

(1) The knowledge tests given by the third-party are the same as those that would otherwise be given by the State using the same version of the knowledge tests and the same written instructions for test applicants as prescribed in subparts G and H of this part.

*Exception:* Knowledge tests given by a third-party knowledge examiner must be administered electronically;

(2) The State must conduct an on-site inspection of each third-party knowledge tester at least once every 2 years, with a focus on examiners with irregular results such as unusually high or low pass/fail rates;

(3) The State must issue the third-party knowledge tester a CDL knowledge testing certificate upon the execution of a third-party knowledge testing agreement;

(4) The State must issue each third-party CDL knowledge test examiner a knowledge testing certificate upon successful completion of a formal knowledge test examiner training course prescribed in § 384.228;

(5) The State must, at least once every 2 years, do one of the following for each third-party knowledge examiner:

(i) Have State employees covertly take the knowledge tests administered by the third-party as if the State employee were a test applicant;

(ii) Have State employees co-score along with the third-party examiner during CDL knowledge tests to compare pass/fail results; or

(iii) Re-test a sample of drivers who were examined by the third-party to compare pass/fail results.

(6) The State must take prompt and appropriate remedial action against a third-party knowledge tester that fails to comply with State or Federal standards for the CDL knowledge testing program, or with any other terms of the third-party contract;

(7) The State has an agreement with the third-party containing, at a minimum, provisions that:

(i) Allow FMCSA, or its representative, and the State to conduct random examinations, inspections, and audits of its records, facilities, and operations without prior notice;

(ii) Require that all third-party knowledge test examiners meet the qualification and training standards of § 384.228;

(iii) Allow the State to do any of the following:

(A) Have State employees covertly take the knowledge tests administered by the third-party as if the State employee were a test applicant;

(B) Have State employees co-score along with the third-party examiner during CDL knowledge tests to compare pass/fail results; or

(C) Have the State re-test a sample of drivers who were examined by the third-party.

(iv) Reserve unto the State the right to take prompt and appropriate remedial action against a third-party knowledge tester that fails to comply with State or Federal standards for the CDL knowledge testing program, or with any other terms of the third-party contract;

(v) Require the third-party knowledge tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third-party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. *Exception:* A third-party tester that is a government entity is not required to maintain a bond;

(vi) Require the third-party tester to use only CDL knowledge examiners who have successfully completed a formal CDL knowledge test examiner training course as prescribed by the State and have been certified by the State as a CDL knowledge examiner qualified to administer CDL knowledge tests;

(vii) Require the third-party knowledge tester to notify the State driver licensing agency through secure electronic means when a driver applicant passes knowledge tests administered by the third-party tester; and

(viii) Require the third-party knowledge tester to maintain copies of the following records at its principal place of business:

(A) A copy of the State certificate authorizing the third-party tester to administer a CDL knowledge testing program for the classes and types of commercial motor vehicles listed;

(B) A copy of each third-party knowledge examiner's State certificate authorizing the third-party examiner to administer CDL knowledge tests for the classes and types of commercial motor vehicles listed;

(C) A copy of the current third-party knowledge testing agreement; and

(D) A copy of each third-party knowledge examiner's training record.

5. Revise § 383.79(a)(1) to read as follows:

**§ 383.79 Driving skills testing of out-of-State students; knowledge and driving skills testing of military personnel.**

(a) \* \* \*

(1) *State that administers the driving skills test.* A State may administer its driving skills test, in accordance with subparts F, G, and H of this part, to a person who is to be licensed in another United States jurisdiction (i.e., State of domicile). Such test results must be transmitted electronically directly from the testing State to the licensing State in a direct, efficient, and secure manner.

\* \* \* \* \*

6. Add paragraph (d) to § 383.93 to read as follows:

**§ 383.93 Endorsements.**

\* \* \* \* \*

(d) *Exception.* Operators are not required to obtain the passenger (P) endorsement to their CDL if the following conditions are met:

(1) A commercial motor vehicle designed to transport passengers, including a school bus, is being transported from the manufacturer to a distributor or as part of a *driveaway-towaway* operation, as defined in § 390.5T of this subchapter; and

(2) The vehicle is empty of all passengers except the driver.

**PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S  
LICENSE PROGRAM**

7. The authority citation for part 384 continues to read as follows:

**Authority:** 49 U.S.C. 31136, 31301, et seq., and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

8. Revise § 384.228 to read as follows:

**§ 384.228 Examiner training and record checks.**

For all State and third-party CDL test examiners, the State must meet the following 10 requirements:

(a) Establish examiner training standards for initial and refresher training that provides CDL test examiners with a fundamental understanding of the objectives of the CDL testing program, and with all of the knowledge and skills necessary to serve as a CDL test examiner and assist jurisdictions in meeting the Federal CDL testing requirements.

(b) Require all State knowledge and skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL knowledge and skills tests.

(c) The training course for CDL knowledge test examiners, including third-party knowledge test examiners, must cover at least the following three units of instruction:

(1) Introduction to CDL Licensing System:

(i) The Commercial Motor Vehicle Safety Act of 1986.

(ii) Drivers covered by CDL program.

(iii) CDL vehicle classification.

(iv) CDL endorsements and restrictions.

(2) Overview of the CDL tests:

(i) CDL test, classifications, and endorsements.

(ii) Different examinations.

(iii) Representative vehicles.

(iv) Validity and reliability.

(v) Test maintenance.

(3) Knowledge tests:

(i) General knowledge tests.

(ii) Specialized knowledge tests.

(iii) Selecting the appropriate tests and test forms.

(iv) Knowledge test administration.

(4) *Exception.* Current third-party skills testers who have maintained their CDL test examiner certification are not required to complete the units of instruction set forth in paragraphs (c)(1) and (2) of this section.

(d) The training course for CDL skills test examiners must cover at least the following five units of instruction:



(1) Introduction to CDL Licensing System:

- (i) The Commercial Motor Vehicle Safety Act of 1986.
- (ii) Drivers covered by CDL program.
- (iii) CDL vehicle classification.
- (iv) CDL endorsements and restrictions.

(2) Overview of the CDL tests:

- (i) CDL test, classifications, and endorsements.
- (ii) Different examinations.
- (iii) Representative vehicles.
- (iv) Validity and reliability.
- (v) Test maintenance.

(3) Vehicle inspection test:

- (i) Test overview.
- (ii) Description of safety rules.
- (iii) Test scoring procedures.
- (iv) Scoring standards.
- (v) Calculating final score.

(4) Basic control skills testing:

- (i) Setting up the basic control skills course.
- (ii) Description of safety rules.
- (iii) General scoring procedures.
- (iv) Administering the test.
- (v) Calculating the score.

(5) Road test:

- (i) Setting up the road test.
- (ii) Required maneuvers.

(iii) Administering the road test.

(iv) Calculating the score.

(e) Require all third-party skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL skills tests. The training course must cover at least the five units of instruction in paragraph (d) of this section.

(f) Require State and third-party CDL knowledge and skills test examiners to successfully complete a refresher training course and examination every 4 years to maintain their CDL test examiner certification. The refresher training course must cover at least the following:

(1) For CDL knowledge test examiners, including third-party knowledge test examiners, the three units of training described in paragraph (c) of this section.

(2) For CDL skills test examiners, the five units of training described in paragraph (d) of this section.

(3) Any State specific material and information related to administering CDL knowledge and skills tests.

(4) Any new Federal CDL regulations, updates to administering the tests, and new safety related equipment on the vehicles.

(g)(1) Complete nationwide criminal background check of all State and third-party test examiners at the time of hiring. *Exception.* For current third-party skills testers who have maintained their CDL test examiner certification and have already been subject to a nationwide criminal background check, a State is not required to complete the background check if the third-party skills test examiner also applies to become certified as a third-party knowledge test examiner.

(2) Complete nationwide criminal background check of any State and third-party current test examiner who has not had a nationwide criminal background check.

(3) Criteria for not passing the criminal background check must include at least the following:

(i) Any felony conviction within the last 10 years; or

(ii) Any conviction involving fraudulent activities.

(h) Maintain a record of the results of the criminal background check and CDL examiner test training and certification of all CDL test examiners.

(i) Rescind the certification to administer CDL tests of all test examiners who do not successfully complete the required refresher training every 4 years.

(j) The eight units of training described in paragraphs (c) and (d) of this section may be supplemented with State-specific material and information related to administering CDL knowledge and skills tests.

9. Revise § 384.229 to read as follows:

**§ 384.229 Skills and knowledge test examiner auditing and monitoring.**

(a) To ensure the integrity of the CDL skills testing program, the State must:

(1) At least once every 2 years, conduct unannounced, on-site inspections of third-party testers' and examiners' records, including comparison of the CDL skills test results of applicants who are issued CDLs with the CDL scoring sheets that are maintained in the third-party testers' files;

(2) At least once every 2 years, conduct covert and overt monitoring of examinations performed by State and third-party CDL skills test examiners.

(3) Establish and maintain a database to track pass/fail rates of applicants tested by each State and third-party CDL skills test examiner, in order to focus covert and overt monitoring on examiners who have unusually high pass or failure rates;

(4) Establish and maintain a database of all third-party skills testers and examiners, which at a minimum tracks the dates and results of audits and monitoring

actions by the State, the dates third-party skills testers were certified by the State, and name and identification number of each third-party CDL skills test examiner;

(5) Establish and maintain a database of all State CDL skills examiners, which at a minimum tracks the dates and results of monitoring action by the State, and the name and identification number of each State CDL skills examiner; and

(6) Establish and maintain a database that tracks skills tests administered by each State and third-party CDL skills test examiner's name and identification number.

(b) To ensure the integrity of the CDL knowledge testing program, the State must:

(1) At least once every 2 years, conduct unannounced, on-site inspections of third-party knowledge testers' and examiners' records;

(2) At least once every 2 years, conduct covert and overt monitoring of examinations performed by third-party CDL knowledge test examiners;

(3) Establish and maintain a database to track pass/fail rates of applicants tested by each third-party CDL knowledge test examiner, in order to focus covert and overt monitoring on examiners who have unusually high pass or failure rates;

(4) Establish and maintain a database of all third-party knowledge testers and examiners, which at a minimum tracks the dates and results of audits and monitoring actions by the State, the dates third-party knowledge testers were certified by the State, and name and identification number of each third-party CDL knowledge test examiner; and

(5) Establish and maintain a database that tracks knowledge tests administered by each State and the name and identification number of each third-party CDL knowledge test examiner.

Issued under authority delegated in 49 CFR 1.87.

*Robin Hutcheson,*  
**Administrator.**

